

## Message Text

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ACTION DHA-02

INFO OCT-01 EA-07 ISO-00 AID-05 EB-07 IO-11 CIAE-00

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FM AMEMBASSY TAIPEI

TO SECSTATE WASHDC 8751

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SUBJECT: HUMAN RIGHTS IN TAIWAN

REF: A-STATE 045319 B-75 TAIPEI A-53

BEGIN UNCLASSIFIED

1. SUMMARY. THIS TELEGRAM COMPRISES THE EMBASSY'S FULL REPLY TO THE DEPARTMENT'S REQUEST (REF A) FOR A 1976 REPORT ON HUMAN RIGHTS IN TAIWAN. IT DRAWS EXTENSIVELY FROM AND IS SUPPLEMENTARY TO REF B WHICH IS THE EMBASSY'S 1975 REPORT ON THE SAME SUBJECT. HUMAN RIGHTS ARE GENERALLY OBSERVED BY THE GOVERNMENT OF THE REPUBLIC OF CHINA, THOUGH A STATE OF MARTIAL LAW DEPRIVES THESE RIGHTS OF INDEPENDENT LEGAL SANCTION AND MAKES THEIR OBSERVATION DEPENDENT ON ADMINISTRATIVE DECISION. WHILE THE GOVERNMENT HAS WIDE-RANGING POWERS TO ARBITRARILY RESTRICT HUMAN RIGHTS, TODAY THE AVERAGE CHINESE GOES ABOUT HIS DAILY ROUTINE WITHOUT ANY CONSCIOUS CONCERN FOR REPRESSIVE GOVERNMENT ACTION. END SUMMARY.

IMPORTANT LEGAL GUARANTEES

2. LEGAL GUARANTEES OF HUMAN RIGHTS ARE INCORPORATED IN  
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THE CONSTITUTION OF THE REPUBLIC OF CHINA, WHICH HAS BEEN IN EFFECT

SINCE DECEMBER 25, 1947. THESE INCLUDE, BUT ARE NOT LIMITED TO:  
EQUALITY BEFORE THE LAW; ARREST, TRIAL AND PUNISHMENT BY LAW; AND  
FREEDOM OF RESIDENCE, SPEECH, TEACHING, WRITING, PUBLICATION,  
RELIGIOUS BELIEF, ASSEMBLY AND ASSOCIATION. ACCORDING TO THE  
CONSTITUTION, SUCH RIGHTS "SHALL NOT BE RESTRICTED BY LAW EXCEPT  
BY SUCH AS MAY BE NECESSARY TO PREVENT INFRINGEMENT UPON THE FREEDOMS  
OF OTHER PERSONS, TO AVERT AN IMMINENT CRISIS, TO MAINTAIN  
SOCIAL ORDER, OR TO ADVANCE PUBLIC WELFARE."

3. HOWEVER, THE PRESIDENT "MAY, IN ACCORDANCE WITH LAW, DECLARE  
MARTIAL LAW WITH THE APPROVAL OF, OR SUBJECT TO CONFIRMATION BY,  
THE LEGISLATIVE YUAN," (ARTICLE 39). IN EMERGENCIES, HE MAY ALSO  
"ISSUE EMERGENCY ORDERS, PROCLAIMING SUCH MEASURES AS MAY BE  
NECESSARY TO COPE WITH THE SITUATION." (ARTICLE 43) THESE MUST  
OBTAIN THE "CONFIRMATION" OF THE LEGISLATIVE YUAN WITHIN A MONTH  
OF THEIR ISSUANCE.

4. IN FACT, THE GROG CONSIDERS ITSELF TO BE IN A "PERIOD OF  
COMMUNIST REBELLION" AND, SINCE 1948, HAS OPERATED UNDER "TEMPORARY  
PROVISIONS" WHICH HAVE, IN EFFECT, GIVEN IT BROAD POWERS TO  
ARBITRARILY RESTRICT THE RIGHTS OF THE PEOPLE AS CONSIDERED NECESSARY  
BECAUSE OF THE EMERGENCY. THESE POWERS ARE EXERCISED THROUGH  
A SERIES OF LAWS AND REGULATIONS ENACTED AND IMPLEMENTED UNDER  
THE CONSTITUTIONAL AUTHORITY OF THE PRESIDENT, THE NATIONAL  
ASSEMBLY AND THE LEGISLATIVE YUAN (TWO ELECTIVE BODIES), AND  
THE EXECUTIVE YUAN, AND WHICH INCLUDE: "TEMPORARY PROVISIONS  
EFFECTIVE DURING THE PERIOD OF COMMUNIST REBELLION"; "NATIONAL  
GENERAL MOBILIZATION LAW"; "MARTIAL LAW"; "CRIMINAL LAW OF THE  
ARMED FORCES"; THE "LAW FOR THE PUNISHMENT OF POLICE OFFENSES"  
"STATUTE FOR THE PUNISHMENT OF REBELLION"(ALL SENT TO THE DEPARTMENT  
AS ENCLOSURES TO REF B).

#### ACTUAL PRACTICE WITH RESPECT TO HUMAN RIGHTS

5. IN PRACTICE, THE SUSPENSION OF LEGAL GUARANTEES OF HUMAN  
RIGHTS HAS NOT RESULTED IN THEIR WIDESPREAD SUBVERSION. THE GROG  
HAS GENERALLY USED ITS EXTRAORDINARY POWERS SPARINGLY, TO THE  
EXTENT THAT IN MOST AREAS, RIGHTS ARTICULATED IN THE UNIVERSAL  
DECLARATION OF HUMAN RIGHTS ARE HONORED ON TAIWAN. THE FOLLOWING  
ARE SPECIFIC COMMENTS ON SELECTED ARTICLES OF THE DECLARATION  
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WHICH HAVE PECULIAR LOCAL APPLICATION:

6. ARTICLE 5. TORTURE OR CRUEL PUNISHMENT DO NOT APPEAR TO BE  
SANCTIONED BY THE GROG, NOR IS THE EMBASSY AWARE OF ANY VERIFIABLE  
INSTANCES IN WHICH THEY ARE EMPLOYED.

END UNCLASSIFIED

7. ARTICLE 8. BEGIN LIMITED OFFICIAL USE. SINCE GUARANTEES OF "FUNDAMENTAL HUMAN RIGHTS" HAVE BEEN CIRCUMSCRIBED BY EMERGENCY MEASURES, THERE IS NO EFFECTIVE LEGAL REMEDY FOR THEIR VIOLATION IF THE GOVERNMENT HAS DECIDED THE VIOLATION FALLS UNDER THE PURVIEW OF THE EMERGENCY MEASURES. IN GENERAL, THE GROC DOES NOT PERMIT THE EXERCISE OF RIGHTS WHICH: 1) CASTS DOUBT UPON ITS CONSTITUTIONAL AUTHORITY AS THE GOVERNMENT OF ALL CHINA; 2) QUESTIONS ITS GOAL OF RETURNING TO THE MAINLAND; 3) ADVOCATES COMMUNISM OR EVEN CONTACTS WITH THE PRC; 4) ADVOCATES THE ESTABLISHMENT OF A DE JURE INDEPENDENT TAIWAN; OR 5) ENGAGES IN DIRECT PUBLIC CRITICISM OF THE TOP LEADERSHIP. END LIMITED OFFICIAL USE

8. BEGIN UNCLASSIFIED ARTICLE 9. ARREST AND DETENTION CAN BE MADE ACCORDING TO EMERGENCY PROCEDURES, AS WELL AS ACCORDING TO CIVIL CRIMINAL PROCEDURE.

9. ARTICLES 10 AND 11. THE SYSTEM OF CRIMINAL PROCEDURE IS BASED ON THE CODE SYSTEMS OF THE CIVIL-LAW COUNTRIES OF WESTERN EUROPE. PROCEEDINGS ARE CONDUCTED FIRST BY A PROCURATOR WITH SEMI-JUDICIAL POWERS AND THEN BY A COURT WITH AN INVESTIGATIVE FUNCTION RATHER THAN AS AN ADVERSARY CONTEST BETWEEN COUNSEL. IT IS WITHOUT A JURY SYSTEM AND THE ELABORATE RULES OF EVIDENCE OF THE COMMON LAW. THE CODE OF CRIMINAL PROCEDURE (ENCLOSURE III OF REF B) HAS EXTENSIVE PROVISIONS TO GUARANTEE FAIR AND OPEN TRIALS AND SIMILAR PROVISIONS EXIST IN THE "MILITARY TRIAL LAW" (ENCLOSURE IV OF REF B) FOR TRIALS UNDER MARTIAL LAW. ARTICLE 53 OF THE "MILITARY TRIAL LAW" PERMITS COURTS-MARTIAL TO SIT IN CLOSED SESSION WHEN "ADJUDICATING CASES INVOLVING NATIONAL DEFENSE SECRETS OR AFFECTING THE GOOD NAME OF THE MILITARY SERVICE", AND A FEW CASES HAVE BEEN TRIED UNDER THIS PROVISION. THE GROC HAS RECENTLY BEGUN TO TRY AN INCREASING NUMBER OF MORE SERIOUS CRIMINAL CASES, PARTICULARLY THOSE INVOLVING VIOLENCE, IN OPEN LIMITED OFFICIAL USE

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MILITARY COURTS (SEE REF B ENCLOSURE V, ARTICLE 8).

10. ARTICLE 13. THERE IS GENERAL FREEDOM OF INTERNAL TRAVEL IN THE ROC, THOUGH SOME SPARSELY INHABITED MOUNTAIN AREAS ARE

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TECHNICALLY OFF LIMITS AND REQUIRE A POLICE PASS TO ENTER. FOR BOTH SECURITY AND ECONOMIC REASONS, TRAVEL OUTSIDE TAIWAN HAS BEEN LIMITED FOR MANY YEARS. IN RECENT YEARS, AS TAIWAN'S ECONOMY HAS PROSPERED, CONTROLS ON OVERSEAS TRAVEL HAVE GRADUALLY BEEN RELAXED. HOWEVER, THERE ARE STILL QUALIFYING RESTRICTIONS ON STUDYING ABROAD, AND ON LEAVING THE COUNTRY BEFORE THE COMPLETION OF OBLIGATORY MILITARY SERVICE. A LIMITED NUMBER OF PEOPLE HAS BEEN DENIED EXIT OR ENTRY PERMITS FOR SECURITY REASONS.

11. ARTICLE 18. THERE IS GENERAL FREEDOM OF RELIGION IN TAIWAN, THOUGH THE GOVERNMENT HAS BANNED SOME PSEUDO-BUDDHIST SECTS AND REV. MOON'S CHRISTIAN UNIFICATION CHURCH FOR REASONS OF SECURITY OR SOCIAL STABILITY.

12. ARTICLE 19. FREEDOM OF OPINION AND EXPRESSION EXISTS SUBJECT TO THE LIMITATIONS DESCRIBED IN THE COMMENTARY ON ARTICLE 8.

13. ARTICLE 21. FULL-SCALE NATIONAL LEVEL ELECTIONS HAVE BEEN RESTRICTED UNTIL THE END OF THE "PERIOD OF COMMUNIST REBELLION." LIMITED SUPPLEMENTARY ELECTIONS FOR THE CENTRAL LEGISLATIVE BODIES WERE HELD IN 1969, 1972, 1973 AND 1975. LOCAL ELECTIONS UP TO AND INCLUDING THE TWO PROVINCIAL-LEVEL ASSEMBLIES--THE TAIPEI MUNICIPAL COUNCIL AND THE TAIWAN PROVINCIAL ASSEMBLY--CONTINUE ON A RELATIVELY FREE BASIS. THOUGH KUOMINTANG (KMT) MEMBERS PRE-DOMINATE IN THESE ELECTIONS, A SIZABLE AND OFTEN VOCAL MINORITY OF LIMITED OFFICIAL USE

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NON-KMT MEMBERS GETS ELECTED.

DOES THE GROC CONDONE HUMAN RIGHTS VIOLATIONS?

14.

EMBASSY HAS NO EVIDENCE THAT THE GROC MAKES A PRACTICE OF CONDONING OR ENCOURAGING ITS OFFICIALS IN VIOLATIONS OF HUMAN RIGHTS WITH RESPECT TO KILLINGS, ARBITRARY ARREST AND PROLONGED DETENTION, TORTURE AND OTHER INHUMAN OR DEGRADING TREATMENT, UNFAIR TRIALS OR OTHER FLAGRANT DENIALS OF THE RIGHT TO LIFE, LIBERTY AND THE SECURITY OF THE PERSON. THERE ARE OCCASIONAL UNVERIFIED REPORTS THAT INVESTIGATIVE AGENCIES ON TAIWAN HAVE SOMETIMES USED TORTURE OR BEATINGS, BUT THE GOVERNMENT DENIES THIS. ON NOVEMBER 7, 1974, SHEN CHIH-YUEH, DIRECTOR OF THE MINISTRY OF JUSTICE INVESTIGATION BUREAU, RESPONDED TO A QUESTION IN THE LEGISLATIVE YUAN BY DENYING THAT HIS BUREAU, THE PRINCIPAL INVESTIGATIVE AGENCY OF THE GOVERNMENT, USED TORTURE. HE SAID THAT HIS PERSONNEL ARE "STRICTLY REQUIRED TO RESPECT HUMAN RIGHTS AND OBSERVE THE LAW IN INVESTIGATING AND HANDLING CASES." ARTICLE 24 OF THE CONSTITUTION (ENCLOSURE I OF REF B) PROVIDES FOR THE DISCIPLINE OF "ANY PUBLIC FUNCTIONARY WHO, IN VIOLATION OF LAW, INFRINGES UPON THE FREEDOM OR RIGHT OF ANY PERSON..." AND GIVES THE INJURED PARTY RIGHT TO CLAIM COMPENSATION. THE EMBASSY IS IN NO POSITION TO STATE CATEGORICALLY THAT IRREGULARITIES DO NOT OCCUR; BUT, IF THEY DO, WE DO NOT BELIEVE THEY ARE WIDESPREAD.

RELEVANT RECENT REPORTS OF APPROPRIATE INTERNATIONAL ORGANIZATIONS

15. THE EMBASSY DOES NOT HAVE ACCESS TO ANY RECENT REPORTS BY INTERNATIONAL ORGANIZATIONS ON THE ROC SUCH AS THOSE CITED REF A. WE BELIEVE THE DEPARTMENT IS IN A BETTER POSITION TO OBTAIN THEM, SINCE ANY REPORTS WHICH MAY HAVE BEEN PUBLISHED ARE NOT AVAILABLE IN THE REPUBLIC OF CHINA. WE ARE NOT AWARE OF ANY AUTHORITATIVE, VERIFIABLE INFORMATION AVAILABLE ON HUMAN RIGHTS VIOLATIONS IN TAIWAN.

EMBASSY ACTIONS TO DISCOURAGE HUMAN RIGHTS VIOLATIONS

16. ON INSTRUCTIONS FROM THE DEPARTMENT OR AT THE REQUEST OF CONGRESSMEN, THE EMBASSY HAS INQUIRED OF THE GROC FROM TIME TO TIME REGARDING SPECIFIC HUMAN RIGHTS CASES. OUR ATTITUDE ON LIMITED OFFICIAL USE

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"POLITICAL PRISONERS," PARTICULARLY AS IT APPLIED TO SECTION 32 OF THE 1974 FOREIGN ASSISTANCE ACT, WAS COMMUNICATED TO THE GROC IN JULY, 1974 (SEE 74 TAIPEI 4536). THE DEPARTMENT IS AWARE OF THESE INSTANCES. IN GENERAL, HOWEVER, WE ARE INCLINED TO BELIEVE THAT INCREASING GROC SENSITIVITY ON HUMAN RIGHTS ISSUES HAS BEEN, AT LEAST IN PART, THE RESULT OF CONCERN FOR THESE ISSUES AS EXPRESSED IN WASHINGTON BOTH BY THE ADMINISTRATION AND THE CONGRESS (SEE TAIPEI 0929 AND TAIPEI 0971).  
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## Message Attributes

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